

Copy for the designated Office (DO/EP)
PATENT COOPERATION TREATY

PCT/EP2004/008964

31

PCT

From the INTERNATIONAL BUREAU

NOTIFICATION OF THE RECORDING
OF A CHANGE

(PCT Rule 92bis.1 and
Administrative Instructions, Section 422)

To:

VOSSIUS & PARTNER
Siebertstrasse 4
81675 Munich
Germany

Date of mailing (day/month/year) 27 May 2005 (27.05.2005)	
Applicant's or agent's file reference G5466 PCT	IMPORTANT NOTIFICATION
International application No. PCT/EP2004/008964	International filing date (day/month/year) 10 August 2004 (10.08.2004)

1. The following indications appeared on record concerning:

<input checked="" type="checkbox"/> the applicant	<input checked="" type="checkbox"/> the inventor	<input type="checkbox"/> the agent	<input type="checkbox"/> the common representative
---	--	------------------------------------	--

Name and Address	State of Nationality	State of Residence
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:

<input checked="" type="checkbox"/> the person	<input type="checkbox"/> the name	<input type="checkbox"/> the address	<input type="checkbox"/> the nationality	<input type="checkbox"/> the residence
--	-----------------------------------	--------------------------------------	--	--

Name and Address KARCH, Ralf Käthe-Kollwitz-Strasse 24 63801 Kleinostheim Germany EPO-DG 1 17. 06. 2005 TEAM 14	State of Nationality DE	State of Residence DE
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

3. Further observations, if necessary:

4. A copy of this notification has been sent to:

<input checked="" type="checkbox"/> the receiving Office	<input checked="" type="checkbox"/> the designated Offices concerned
<input type="checkbox"/> the International Searching Authority	<input type="checkbox"/> the elected Offices concerned
<input type="checkbox"/> the International Preliminary Examining Authority	<input type="checkbox"/> other:

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. (41-22) 338.89.70	Authorized officer Patrick VILLECHAISE (Fax 338 8970) Telephone No. (41-22) 338 8395
--	--

PATENT COOPERATION TREATY

PCT

NOTIFICATION OF THE RECORDING
OF A CHANGE(PCT Rule 92bis.1 and
Administrative Instructions, Section 422)

From the INTERNATIONAL BUREAU

To:

EINGEGANGEN
 VOSSIUS & PARTNER
 Siebertstrasse 4
 81675 Munich
 Germany

06. Juni 2005

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Date of mailing (day/month/year) 27 May 2005 (27.05.2005)	IMPORTANT NOTIFICATION
Applicant's or agent's file reference G5466 PCT	
International application No. PCT/EP2004/008964	International filing date (day/month/year) 10 August 2004 (10.08.2004)

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Name and Address KARCH, Ralf Käthe-Kollwitz-Strasse 24 63801 Kleinostheim Germany	State of Nationality DE	State of Residence DE
	Telephone No.	
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<input type="checkbox"/> the International Preliminary Examining Authority	<input type="checkbox"/> other:	

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Patrick VILLECHAISE (Fax 338 8970)
Facsimile No. (41-22) 338.89.70	Telephone No. (41-22) 338 8395

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Administrative Instructions, Section 422)

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VOSSIUS & PARTNER
Siebertstrasse 4
81675 Munich
GermanyEINGEGANGEN
Vossius & Partner

06. Juni 2005

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☒ the person ☐ the name ☐ the address ☐ the nationality ☐ the residence

Name and Address BRIEL, Oliver Tulpenhofstrasse 25 63067 Offenbach Germany	State of Nationality DE	State of Residence DE
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	

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--	--

VOSSIUS & PARTNER



Patentanwälte Rechtsanwälte

4
Via Telefax - page(s)
Fax-No. 089-2399-4465

VOSSIUS & PARTNER · POB 86 07 67 · 81634 Munich · Germany

European Patent Office

MUNICH

EPO - Munich
59

08. März 2006

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BASEL OFFICE *
EUROPEAN PATENT ATTORNEY
DR. WERNER BASTIAN, Dipl.-Biol.

Partnerschaftsregister Amtsgericht München PR 89

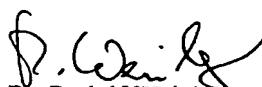
04 76 3974.5
Umicore AG & Co. KG
Our Ref.: G5466 EP

Confirmation Copy

Munich, March 8, 2006
WR/ISS

Reference is made to the telephone conversation between Mr. Marvanne and the undersigned of March 7, 2006:

We herewith enclose a copy of our petition of today to the WIPO requesting two corrected Notifications (Forms PCT/IB/306).


Dr. Rudolf Weinberger
European Patent Attorney

Enclosure:
As mentioned above

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Patentanwälte Rechtsanwälte

Via Telefax - 3 page(s)
Fax-No. 0041-22-338 8970

VOSSIUS & PARTNER · POB 86 07 67 · 81634 Munich · Germany

Organisation Mondiale de la
Propriété Intellectuelle
Attn.: Mr. Patrick Villechaise
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1211 Genève 20
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EUROPEAN TRADEMARK ATTORNEYS

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EUROPEAN PATENT ATTORNEY
DR. WERNER BASTIAN, Dipl.-Biol.

Partnerschaftsregister Amtsgericht München PR 89


EP-Patent Application 04 76 3974.5
Umicore AG & Co. KG
Our Ref.: G5466 EP

COPY

Munich, March 8, 2006
WR/ISS

Reference is made to the telephone conversation with the undersigned of March 7, 2006.

We herewith enclose two Notifications of the recording of a change (Forms PCT/IB/306) wherein the persons Ralf Karch and Oliver Briel are mentioned as "the applicant" and "the inventor". However, they are inventors for all contracting states and applicants only for the USA. Therefore, it is requested to issue two corrected Notifications.


Dr. Rudolf Weinberger
European Patent Attorney

Enclosure:
As mentioned above

MAIN OFFICE
VISITING ADDRESS:
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From the INTERNATIONAL BUREAU

To:

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Siebertstrasse 4
81675 Munich
Germany

EINGEGANGEN

06. Juni 2005

Frist
bearb.:

smt

Date of mailing (day/month/year) 27 May 2005 (27.05.2005)	IMPORTANT NOTIFICATION
Applicant's or agent's file reference G5466 PCT	
International application No. PCT/EP2004/008964	International filing date (day/month/year) 10 August 2004 (10.08.2004)

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Name and Address	State of Nationality	State of Residence
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Name and Address KARCH, Ralf Käthe-Kollwitz-Strasse 24 63801 Kleinostheim Germany	State of Nationality DE	State of Residence DE
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3. Further observations, if necessary:

4. A copy of this notification has been sent to:

☒ the receiving Office ☒ the designated Offices concerned
☐ the International Searching Authority ☐ the elected Offices concerned
☐ the International Preliminary Examining Authority ☐ other:

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Patrick VILLECHAISE (Fax 338 8970)
Facsimile No. (41-22) 338.89.70	Telephone No. (41-22) 338 8395

PATENT COOPERATION TREATY

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From the INTERNATIONAL BUREAU

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81675 Munich
GermanyEINGEGANGEN
Vossius & Partner

06. Juni 2005

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Name and Address	State of Nationality
	State of Residence
	Telephone No.
	Facsimile No.
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<input checked="" type="checkbox"/> the person <input type="checkbox"/> the name <input type="checkbox"/> the address <input type="checkbox"/> the nationality <input type="checkbox"/> the residence	
Name and Address BRIEL, Oliver Tulpenhofstrasse 25 63067 Offenbach Germany	State of Nationality DE
	State of Residence DE
	Telephone No.
	Facsimile No.
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Facsimile No. (41-22) 338.89.70	Telephone No. (41-22) 338 8395

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference G5466 PCT	FOR FURTHER ACTION	See item 4 below
International application No. PCT/EP2004/008964	International filing date (<i>day/month/year</i>) 10 August 2004 (10.08.2004)	Priority date (<i>day/month/year</i>) 28 August 2003 (28.08.2003)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant UMICORE AG & CO. KG		

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).

2. This REPORT consists of a total of 14 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report |
| <input checked="" type="checkbox"/> | Box No. II | Priority |
| <input checked="" type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input checked="" type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input checked="" type="checkbox"/> | Box No. VIII | Certain observations on the international application |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).

<p style="text-align: center;">The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland</p> <p>Facsimile No. +41 22 740 14 35</p>	<p>Date of issuance of this report 28 February 2006 (28.02.2006)</p> <p>Authorized officer Agnes Wittmann-Regis</p> <p>Telephone No. +41 22 338 89 70</p>
--	--

PATENT COOPERATION TREATY

REC'D 10 MAR 2005

WIPO

PCT

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/EP2004/008964

International filing date (day/month/year)
10.08.2004

Priority date (day/month/year)
28.08.2003

International Patent Classification (IPC) or both national classification and IPC
B01J31/22, B01J37/30, C07F15/00

Applicant
UMICORE AG & CO. KG

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465

Authorized Officer

Goebel, M

Telephone No. +49 89 2399-8345



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/008964

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/008964

Box No. II Priority

1. ☐ The following document has not been furnished:

- ☐ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. ☒ It has not been possible to consider the validity of the priority claim because a copy of the priority document was not available to the ISA at the time that the search was conducted (Rule 17.1). This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.
4. Additional observations, if necessary:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/008964

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 14-15 (part)

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for the whole application or for said claims Nos. 14-15 (part)

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form ☐ has not been furnished

☐ does not comply with the standard

the computer readable form ☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/008964

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	7-15
	No: Claims	1-6
Inventive step (IS)	Yes: Claims	
	No: Claims	1-15
Industrial applicability (IA)	Yes: Claims	1-15
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)

and / or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

Box No. VIII Certain observations on the International application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/EP2004/008964

Amendments:

The amendments filed with your letter of 11.02.2003 **cannot be accepted**. They do not fulfil the requirements of Art. 19 or Art. 34 PCT. The former allows voluntary amendment of the claims **after** receipt of the International Search Report ("ISR"), while the latter allows voluntary amendment of claims/description and/or drawings **during** International Preliminary Examination under PCT Chapter II ("IPE"). Neither has any other basis in the PCT been invoked by the applicant.

A basis for the performed **voluntary** amendments is therefore **not found** in the PCT, since the ISR has not been issued yet. In the present stage of the international phase within PCT Chapter I **only corrections** of obvious errors may be made, **only after authorisation** by the competent PCT authority, cf. Rule 91 PCT. This is evidently **not the case** here.

Basis for this search opinion is therefore the **application as originally filed**.

Non-establishment of Opinion:

1. Claim 14 relates to the generic use of the defined catalyst in **any** of an *a priori infinite amount of catalytic reactions*, which breadth is neither supported by the description, nor disclosed therein (Arts. 5 and 6 PCT). Support and disclosure is only given to the extent of the envisioned catalytic reactions in the description as the only elucidation in this respect (cf. page 8, last para. to page 9, para. 2). This non-compliance with the substantive provisions is to such an extent, that the search was performed taking into consideration the non-compliance in determining the extent of the search of claim 14 (cf. PCT Guidelines 9.19).

Therefore the search was restricted to the use of the defined complexes as precursors to, or actual, catalysts in catalytic hydrogenations of C-C, C-O, C-N or N-N double bonds, catalytic hydroformylation, hydrosilylation.

2. Claim 15 likewise relates to the generic use of the defined catalyst within **any** conceivable preparation method for **any** type of catalyst considerable as being heterogenous, irrespective of its final structure. Again, support and disclosure within the meaning of Articles 5 and 6 PCT is only given for a part of such methods (see page 9, para. 3). This non-compliance with the substantive provisions is to such an extent, that the search was performed taking into consideration the non-compliance in determining the extent of the

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search of claim 15 (cf. PCT Guidelines 9.19).

Therefore the search was restricted to the use of the defined complexes for preparing heterogenous catalysts by immobilization of the soluble complex.

3. The **parts of claims 14-15 which were not searched** are **not**, and will not be, **subject to International Preliminary Examination**, irrespective of whether or not the claims are amended during any Chapter II procedure (cf. Rule 66.1(e) PCT).

Clarity:

Irrespective of the incomplete support of the claim (see preceding section), the subject-matter to be protected in claim 14 is also **not clearly defined** (Art. 6 PCT). The terminology "**in catalytic reactions**" leaves it **open whether** the defined complex is used (i) as the actual and exclusive **catalyst to achieve a particular effect**, i.e. catalysis of a given chemical reaction, or (ii) as a **precursor for the preparation** of the actual catalyst, including *in situ* preparation, which in turn is to perform a given catalytic reaction.

In view of the description on page 8, last para. to page 9, para. 1, and in contrast to the following paragraph commencing with "Furthermore ... complexes ... can be used", i.e. defining a further use, the above interpretation (i) appears to be applicable for the subject-matter to be protected by the claim and is used for the present purposes.

Documents Cited:

Reference is made to the following documents, cited in the international search report ("ISR"):

- D1:** KOELLE, ULRICH ET AL: "Organometallic aqua complexes. Part 3. Olefin aqua complexes of rhodium(I)" CHEMISCHE BERICHTE , 128(9), 911-17 CODEN: CHBEAM; ISSN: 0009-2940, 1995, XP009044581
- D2:** US-B1-6 291 606 (TANG BEN ZHONG ET AL) 18 September 2001 (2001-09-18)
- D3:** WO 02/36261 A (IMPERIAL CHEMICAL INDUSTRIES PLC; HEMS, WILLIAM, PATRICK; HUTCHINGS, G) 10 May 2002 (2002-05-10)
- D4:** BERGBREITER D E ET AL: "Amphoteric, Water-Soluble Polymer-Bound Hydrogenation Catalysts" TETRAHEDRON LETTERS, ELSEVIER SCIENCE PUBLISHERS, AMSTERDAM, NL, vol. 38, no. 21, 26 May 1997 (1997-05-26),

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pages 3703-3706, XP004064015 ISSN: 0040-4039

- D5:** BATS, JAN W. ET AL: "Low-temperature phase of diaqua(1,5-cyclooctadiene)rhodium(I) trifluoromethanesulfonate" ACTA CRYSTALLOGRAPHICA, SECTION E: STRUCTURE REPORTS ONLINE, E60(1), M85-M87 CODEN: ACSEBH; ISSN: 1600-5368, **19 December 2003** (2003-12-19), XP002319626
- D6:** HASHMI, A. STEPHEN K. ET AL: "On the enantioselective rhodium-catalyzed enyne cyclization" ADVANCED SYNTHESIS & CATALYSIS, 345(11), 1237-1241 CODEN: ASCAF7; ISSN: 1615-4150, **19 November 2003** (2003-11-19), XP002319627
- D7:** MOTODA DAI ET EL: "Phosphane-Free Rhodium Catalyst in an Anionic Micellar System for [4+2] Annulation of Dienynes" ANGEWANDTE CHEMIE INTERNATIONAL EDITION, vol. 43, no. 14, **24 March 2004** (2004-03-24), pages 1860-1862, XP002319460

Documents **D1** and **D4** are also acknowledged in the application. Documents **D5-D7** are cited under **Rule 70.10 PCT**. Unless indicated otherwise, the **respective passages** cited with the individual documents in the ISR **apply** in assessing these documents in the individual sections below.

Novelty:

- 1.1 The subject-matter of claim **1** appears **known** from **D1**, which discloses **[Rh(diene)(H₂O)₂]X** (diene= cod, nbd; X= OTs, BF₄, OTf, SbF₆, known to be **non-coordinating anions**) as a species present in solution (d₆-acetone, CD₂Cl₂, THF) and resulting from rapid primary **precipitation** with ether from acetone solutions, on the basis of ¹H and ¹⁷O-NMR spectroscopic determinations (cf. pages 911-913). Hence **D1** provides an **enabling disclosure** for making and separating the title compounds (cf. PCT Guidelines 12.02). In this respect, it is irrelevant that the compound was not obtainable in **D1** in crystalline form, losing one of its H₂O ligands upon attempted crystallisation from acetone-ether (cf. page 914), since this operation corresponds merely to a purification and claim **1** is **not restricted** to the purified, i.e. crystalline, compounds.
- D1** is **silent** with respect to catalysis using these compounds or derivatives thereof.

- 1.2 Document **D1** also **anticipates** the subject-matter of claims **2-6**, dependent on claim **1**.

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- 1.3 Therefore, the present application does not meet the criterion set forth in Article 33(2) PCT, as the subject-matter of product claims **1-6** appears to be **not novel** (cf. Rule 64(1)-(3) PCT).
- 2.1 Either of documents **D1** or **D2** may be regarded as being the closest prior art to the subject-matter of claim **7**, which documents both disclose (cf. **D1**: page 911-912) the same process for preparing **[Rh(diene)(H₂O)₂]X** (**D1**, **D2**: diene= cod, nbd; **D1**: X= OTs, BF₄, OTf, SbF₆; **D2**: OTs) as primary product.
The subject-matter of claim **7** *differs* from this known process in that the a ***separately prepared solution of the silver salt is added*** to the Rh(I)-diene compound in an aqueous solvent mixture, ***instead of a solid silver salt***.
- 2.2 Document **D2** may be regarded as being the closest prior art to the subject-matter of claim **14**, as presently interpreted and examined (see section Non-establishment of Opinion), and discloses the use of the similar ***monoaqua*** complexes **[Rh(diene)(H₂O)]OTs** in catalytic ***polymerizations of acetylenes***.
In view of the above examination restrictions, the subject-matter of claim **14** *differs* from this known use in that a ***different starting material***, i.e. the corresponding ***bisaqua*** complexes **[Rh(diene)(H₂O)₂]X**, is used as catalyst in a ***different chemical reaction***, i.e. ***hydrogenations of C-C, C-O, C-N or N-N double bonds, hydroformylation or hydrosilylation***.
- 2.3 Either of documents **D3** (cf. ISR and page 2, lines 30-39; page 6, lines 2-13) or **D4** (cf. page 3704) may be regarded as being the closest prior art to the subject-matter of claim **15**, as examined (see section Non-establishment of Opinion). Both documents disclose the ***preparation of heterogenous catalysts*** using similar ***soluble cationic (diene)Rh(I) precursors***, resulting in immobilized Rh(I) complexes for use in (asymmetric) hydrogenations. The soluble precursors are preferably **[Rh(cod)₂]BF₄** (**D3**) or **[Rh(cod)]OTf** (**D4**).
The subject-matter of claim **15** *differs* from both of these known preparation uses ***in specifying the presence of two water ligands*** in the otherwise same cationic (diene)Rh(I) precursor to be used, i.e. **[Rh(diene)(H₂O)₂]X**.
- 2.4 The subject-matter of claims **7-15**, as presently interpreted and examined (see section

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Non-establishment of Opinion), is therefore **novel** (Art. 33(2) PCT).

Inventive Step:

1. Notwithstanding the objection of lack of novelty, the following further observations are made regarding inventive step, should the applicant in a later stage be able to delimit the subject-matter vs. the prior art.
- 2.1 The **problem to be solved** by the present invention, as set out in the present application on page 1, paras. 3-5 in conjunction with page 8, last para. to page 9, para. 3 may therefore be regarded as to provide cationic (diene)Rh(I) complexes for use as catalysts or precursors thereto, in particular catalytic hydrogenation of C-C, C-O, C-N or N-N double bonds, hydroformylation or hydrosilylation.
- 2.2 Since **no experimental data** is provided in the present application with respect to this use in catalysis and in view of the fact that a catalytic action is *a priori* not derivable from a chemical formula, it is at present **not credible that this chemical problem is solved**. Since the **presence of an inventive step would depend on** such a catalytic action as the **effect of the compound claimed in claim 1** (and the thereupon dependent claims 2-6), this **effect needs to be demonstrated**. The same reasoning applies with respect to the use of these compounds according to claim 14 and the final catalyst products resulting from the catalyst preparation use according to claim 15. Otherwise the **only problem** recognizable as having been in fact **solved** would be the **provision of further chemical compounds**, which is **devoid of inventive merit**, since inherent to the chemist's customary practice (cf. Decision of the EPO Technical Boards of Appeal T 939/92).
- 2.3 Such an effect must be based on the disclosure of the original application, i.e. the **effect must be demonstrated for the originally envisioned catalytic reactions** (see section Non-establishment of Opinion).
The **same applies** if the argumentation of the applicant should be based on the achievement of a **surprising effect**, i.e. **later filed additional experiments cannot be used for this purpose**. Only for the verification of originally invoked effects may such further worked examples be used. The applicant's attention is drawn to established case law of the EPO Boards of Appeal in this respect, confirmed by the recent decision **G 1/03** of the

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EPO Enlarged Board of Appeal (see point 2.3.3 of the reasons therein).

Hence the *effects* demonstrated in **D5-D7** (see section Certain Documents Cited) *may not be used*, since these are derived from a *different catalytic reaction*, (di)enyne cyclisations.

- 2.4 Since any inventive merit hinges on the compounds of claim **1**, a *process for preparing such compounds* as claimed in claim **7** and the thereupon dependent claims **8-13**, even if not foreshadowed by the prior art, *will only involve an inventive step if these compounds*, known or novel, *serve a technical non-trivial purpose*.
- 2.5 The present application does therefore not meet the criterion set forth in Article 33(3) PCT, as the subject-matter of claims **1-15** does **not** appear to involve an **inventive step**.
3. Should the applicant be able to overcome the fundamental deficiencies mentioned in items 2.2-2.3 above, his attention is drawn to the following brief evaluation of the content of documents **D1-D4** with respect to the presently claimed subject-matter.
- 3.1 Neither **D1** nor **D2** foreshadows the envisioned use of the claimed compounds according to claims **14** or **15**, as presently interpreted and examined (see section Non-establishment of Opinion).
- 3.2 For this reason, the **crystalline** compounds of claim **1** (= possible delimitation from **D1**) would also not be foreshadowed by **D1**.
- 3.3 The preparation process of claim **7** is not foreshadowed by **D1** or **D2**.
- 3.4 With respect to the preparation use claimed in claim **15**, the **objective technical problem** vis-à-vis **D3** or **D4** would be to provide an alternative preparation for heterogenous catalysts suitable for *inter alia* hydrogenation using likewise a cationic (diene)Rh(I) precursor.
As a mere **alternative precursor comprised in the generic disclosure of D3** and in the **absence of surprising effects**, the use of the compounds of claim **1** in preparing heterogenous catalysts would be **foreshadowed** by the teaching of **D3**. This is all the more apparent in view of the same preference for the cod ligand in **D3**. Moreover the

skilled person, based on his common general knowledge, would *a priori* expect the **members of the family of cationic (diene)Rh(I) compounds** comprising further ligands of at most the same bonding strength (e.g. diene, solvent) to be **interchangeably usable** if only ligand exchange of these further ligands is concerned. The **water ligand is known as a weak ligand**, e.g. from **D1**, which additionally teaches that the H₂O ligands are labile and readily displaced by stronger ligands, e.g. phosphines (cf. pages 915-916) or tosylate in organic solvents upon slow crystallization.

Document **D4**, on the other hand, uses specifically the **same complex** but **devoid of complexed water**. In view of the arguments given with respect to **D3** and common general knowledge, the presently claimed bisauquo analogues are a **clear alternative** for the skilled person to the specifically used precursor in **D4**.

- 3.5 **Should** the applicant argue that the terminology "**in catalytic reactions**" in claim 14 includes the use of the defined complex as a **precursor for the preparation of the actual catalyst**, including *in situ* preparation, which in turn is to perform a given catalytic reaction, then **D3** and **D4** would be relevant for this claim as well, as detailed in the preceding item.

In case typical **homogenous** reactions with asymmetric ligands are concerned, **D3** is particularly relevant. It discloses a broad range of ligands for use with the preferred cationic (diene)Rh(I) precursors by ligand exchange (cf. page 3, line 2 to page 4, line 5; page 6, lines 2-13). Although only the immobilized catalyst complexes are exemplified, it is common general knowledge that their homogenous congeners are likewise catalytically active (this obviously being a prerequisite for heterogenization attempts), albeit possibly with different results. It is also common general knowledge that the disclosed ligand exchange on the heterogenized precursors may be performed in the same way with the corresponding homogenous precursors. **D3** would thus **foreshadow** such subject-matter, in view of the arguments given with respect to **D3** and common general knowledge in item 3.4 above.

- 3.6 In view of items 3.4 and 3.5, if the **only effect** of the compounds claimed in claim 1 and the thereupon dependent claims 2-6 resides in their **general suitability as catalyst precursors**, absent of surprising effects, then these could only be considered as alternatives **foreshadowed** by **D3** or **D4** and **common general knowledge** or by either of **D3** or **D4** in combination with **D1** and **common general knowledge**.

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Certain Documents Cited:

1. Documents **D5-D6**, both by the present inventors, disclose the exact **same complexes** as presently claimed, in **crystalline form, made by the same process** (referring to the priority document of the present application). The complexes are used in **enyne cyclisations**. Heterogenous systems are **not disclosed**.
In view of the above examination restrictions, the subject-matter of claims **1-13** of the present application is disclosed by these documents.
2. Document **D7** discloses a catalyst system for **dienyne cyclisations**. The system is generated by reaction of SDS and $[(\text{Rh}(\text{diene})\text{Cl})_2]$ in water (diene= cod, nbd), in the **absence of Ag salts**, and formulated as $[\text{Rh}(\text{diene})(\text{H}_2\text{O})_n]\text{SDS}$, wherein SDS associates into a micellar structure, i.e. a polyvalent **non-coordinating anion**. A value for "*n*" is **not specified, nor** are the **catalytically active species separated**. **D7** further teaches the great technical significance of cationic Rh catalysts for catalytic (asymmetric) hydrogenation, hydrosilylation, referring to a technical encyclopedia.
3. Although **D5-D6** would be novelty destroying for the mentioned claims and **D7** would be relevant for inventive step for at least claim 1, these documents are not considered as state of the art within the PCT procedure under the **assumption that the priority claimed in the present application is valid**.
4. In the regional phase before the EPO, however, these documents will be considered as state of the art under Art. 54(2) EPC if the **priority date cannot be validly claimed**.

VOSSIUS & PARTNER

Patentanwälte Rechtsanwälte



EPO - Munich
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23. März 2006

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Partnerschaftsregister Amtsgericht München PR 89

04 76 3974.5
Umicore AG & Co. KG
Our Ref.: G5466 EP

Munich, March 23, 2006
WR/RA/ISS

Further to our petition dated March 8, 2006 in the above-identified patent application, we herewith enclose two corrected Notifications of the Recording of a Change issued by the International Bureau of WIPO.


Dr. Peter A. Rauh

European Patent Attorney

Enclosure:

As mentioned above

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PATENT COOPERATION TREATY

PCT

NOTIFICATION OF THE RECORDING
OF A CHANGE(PCT Rule 92bis.1 and
Administrative Instructions, Section 422)

From the INTERNATIONAL BUREAU

To:

VOSSIUS & PARTNER
Siebertstrasse 4 Vossius & Partner
81675 Munich
Germany

21. März 2006

Frist
bearb.:

afr

Date of mailing (day/month/year) 16 March 2006 (16.03.2006)	IMPORTANT NOTIFICATION
Applicant's or agent's file reference G5466 PCT	
International application No. PCT/EP2004/008964	International filing date (day/month/year) 10 August 2004 (10.08.2004)

1. The following indications appeared on record concerning:		
<input checked="" type="checkbox"/> the applicant	<input checked="" type="checkbox"/> the inventor	<input type="checkbox"/> the agent <input type="checkbox"/> the common representative
Name and Address	State of Nationality	State of Residence
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	
2. The International Bureau hereby notifies the applicant that the following change has been recorded concerning:		
<input type="checkbox"/> the person	<input type="checkbox"/> the name	<input type="checkbox"/> the address <input type="checkbox"/> the nationality <input type="checkbox"/> the residence
Name and Address KARCH, Ralf Käthe-Kollwitz-Strasse 24 63801 Kleinostheim Germany	State of Nationality DE	State of Residence DE
	Telephone No.	
	Facsimile No.	
	Teleprinter No.	
3. Further observations, if necessary: The person identified in Box 2 has been recorded as applicant for the United States of America only and inventor for all designated States.		
4. A copy of this notification has been sent to:		
<input checked="" type="checkbox"/> the receiving Office	<input checked="" type="checkbox"/> the designated Offices concerned	
<input type="checkbox"/> the International Searching Authority	<input type="checkbox"/> the elected Offices concerned	
<input type="checkbox"/> the International Preliminary Examining Authority	<input type="checkbox"/> other:	

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Patrick VILLECHAISE (Fax 338 8970)
Facsimile No. (41-22) 338.89.70	Telephone No. (41-22) 338 8395

PATENT COOPERATION TREATY

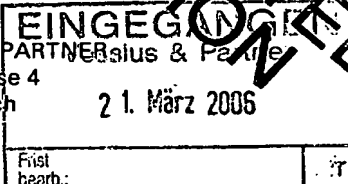
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To:

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Siebertstrasse 4
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3. Further observations, if necessary: The person identified in Box 2 has been recorded as applicant for the United States of America only and inventor for all designated States.		
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PATENT COOPERATION TREATY

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PCT

NOTIFICATION OF THE RECORDING
OF A CHANGE

(PCT Rule 92bis.1 and
Administrative Instructions, Section 422)

From the INTERNATIONAL BUREAU

To:

VOSSIUS & PARTNER
Siebertstrasse 4
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